



DETERMINATION OF MERGER NOTIFICATION M/16/009 - TEDCASTLES (GROUP) / SIRIO RETAIL OPERATIONS LIMITED & SIRIO PROPERTY COMPANY LIMITED AND CERTAIN ASSETS OF CANICULA INVESTMENTS LIMITED

Section 21 of the Competition Act 2002

Proposed acquisition by Tedcastles (Group) of Sirio Retail Operations Limited & Sirio Property Company Limited and Certain Assets of Canicula Investments Limited

Dated 23 March 2016

Introduction

1. On 11 February 2016, in accordance with section 18(1) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction¹, whereby Tedcastles (Group) (“Tedcastles”), a wholly-owned subsidiary of Hillingdon Investment Company (“Hillingdon”), would acquire the entire issued share capital and thus sole control of each of Sirio Retail Operations Limited and Sirio Property Company Limited (“Target Companies”), as well as sole control over certain assets, constituting a retail fuel service station in Ballyvolane, Co. Cork and an oil gantry in Newhall, Co. Kildare (“the Target Assets”), both of which are currently controlled by Canicula Investments Limited (“Canicula Investments”).

The Proposed Transaction

2. On 03 December 2015, Tedcastles, through its subsidiary Tedcastles Oil Products (“TOP”), offered the sole individual shareholder² in Sirio Retail Holdings Limited³, together with its subsidiaries Tougher’s Oil Distributors Limited and Canicula Investments (collectively “the Vendors”), written proposed terms of agreement for the acquisition of the Target Companies and the Target Assets. The proposed terms were accepted by the Vendors on the same date.
3. Notwithstanding the fact that a formal written purchase agreement had not yet been executed at the time of the notification, the Commission considers that the undertakings

¹ The notification was not properly completed by the parties and as a consequence the Commission was required to issue a number of requests for further information to both of the parties involved.

² [...].

³ Sirio Retail Holdings Limited is the ultimate parent company of the Sirio group of companies, which consists of its direct subsidiaries Canicula Investments Limited and Tougher’s Oil Distributors Limited, together with the Target Companies which are direct wholly-owned subsidiaries of Tougher’s Oil Distributors Limited.



involved have demonstrated to the Commission a good faith intention to conclude an agreement for the purposes of section 18(1A)(b)(ii) of the Act.

The Undertakings Involved

Tedcastles

4. Tedcastles, a private unlimited company incorporated in the State, is part of Tedcastles Holdings, a group of companies, with its ultimate parent company being Hillingdon.⁴ Tedcastles has its registered office at Promenade Road, Dublin 3.
5. Tedcastles is involved in the fuel industry in the State through its subsidiary TOP, with its main activity in the State being the importation and distribution (non-retail and retail) of refined fuel products. This includes the operation of a fuel terminal in Dublin Port, a network of [...] company-owned and company-operated (“CoCo”) distribution depots and a network of [...] CoCo service stations. Tedcastles supplies motor fuels to a network of 175 retail service stations across the country.⁵
6. In the financial year ending 31 March 2015, Hillingdon had a worldwide turnover of €[...], of which €[...] was generated in the State. In the same period, TOP had a worldwide turnover of approximately €[...], of which €[...] was generated in the State.

The Vendors

7. The Vendors consist of Sirio Retail Holdings Limited and its direct subsidiaries Tougher’s Oil Distributors Limited (“Tougher’s Oil”) and Canicula Investments, all three of which are single member private companies limited by shares and incorporated in the State, with their registered offices at Unit W9C, Ladytown Business Park, Newhall, Naas, County Kildare.⁶
8. The Vendors are active in the retail sale of motor fuels, automotive lubricants, heating oil and groceries in the State.

The Target Companies and Target Assets

9. The Target Companies are currently wholly-owned by Tougher’s Oil. It is proposed that Tedcastles will acquire sole control over the Target Companies, which operate a head office function and eight retail service stations, seven of which have retail convenience stores, as set out in Table 1 below:

Table 1: Retail service stations and head office operated by the Target Companies

Site & Brands (fuel + convenience store)	Site Location
TOP Newhall + Spar	Newhall, Naas, Co. Kildare

⁴ Hillingdon is ultimately owned by the Reihill Family.

⁵ This includes Tedcastles’ [...] CoCo service stations; [...] dealer-owned and dealer-operated (“DoDo”) branded and contracted service stations (DoDo service stations are contracted for terms of up to five years, after which the forecourt operator is free to switch suppliers); and [...] DoDo branded and uncontracted service stations.

⁶ As noted in footnote 2, [...] is the sole shareholder and co-director in the Sirio group of companies.



TOP Newtownmountkennedy + Unbranded convenience store	Main Street, Kiladrennan, Newtownmountkennedy, Co. Wicklow
TOP Rathangan + Spar	Kildare Road, Rathangan, Co. Kildare
TOP Athy + Unbranded convenience store	Blackpark Station, Kilkenny Road, Athy, Co. Kildare
dci Fuel Card JFK (no convenience store)	JKF Industrial Park, Dublin 12
TOP Stradbally + Unbranded convenience store	Main Street, Stradbally, Co. Laois
TOP Mullingar + Spar	Longford Road, Mullingar, Co. Westmeath
TOP Ballymore Eustace + Unbranded convenience store	Ballymoreeustace, Horsepasstown, Poulaphouca, Co. Kildare
Head Office	Unit W9C, Ladytown Business Park, Newhall, Naas, Co. Kildare

10. It is further proposed that Tedcastles will acquire sole control over the Target Assets from Canicula Investments, as is set out in Table 2 below:

Table 2: Target Assets

Site & Brands (fuel + convenience store)	Site Location
Esso Ballyvolane + Unbranded convenience store	Ballyhooley Road, Ballyvolane, Co. Cork
Oil Gantry	Newhall, Naas, Co. Kildare

11. In the financial year ended 31 March 2015⁷, the Target Companies generated turnover of approximately €[...], the entirety of which was generated in the State. For the financial year ended 31 December 2015, the turnover attributable to the Target Assets was approximately €[...], the entirety of which was generated in the State.⁸

Rationale for the Proposed Acquisition

12. The notification states:

“TOP considers that the Proposed Transaction presents it with the opportunity to enhance its presence in the regions where the Target Companies are active.”

Third Party Submissions

13. No submission was received.

Competitive Analysis

⁷ Beginning from date of incorporation, being 16 October 2014.

⁸ The whole of the turnover attributed to the Target Assets in the financial year ended 31 December 2015 was generated by the Ballyvolane service station since the oil gantry has not carried on any business since April 2014.



14. Tedcastles (through TOP) is involved in the importation and distribution (non-retail and retail) of refined fuel products in the State. TOP has a nationwide network of CoCo distribution depots, CoCo retail service stations and supplies a network of DoDo retail service stations under the TOP brand (see paragraph 5 above). TOP estimates that, in 2014, it held national market shares of retail motor fuel, by volume and by number of sites, of approximately [5-10]% and [5-10]% respectively.⁹
15. The Target Companies and Target Assets consist primarily of retail service stations, as set out in paragraphs 9 and 10 above, and are active in retail sales of refined fuel products, which includes motor fuel (road diesel, also called DERV¹⁰, and petrol), automotive lubricants and heating oil (kerosene and marked gas oil). The retail service stations to be acquired pursuant to the proposed transaction are, in the main, already supplied by TOP and seven of the retail service stations operated by the Target Companies are TOP-branded.¹¹ As further set out in paragraphs 9 and 10, eight of the nine retail service stations to be acquired pursuant to the proposed transaction also have retail convenience stores¹².
16. There are therefore three areas of horizontal overlaps in the activities of the parties within the State:
 - i. Retail sales of motor fuel (diesel (DERV) and petrol) and automotive lubricant;
 - ii. Operation of convenience retail stores (retail grocery stores) associated with retail service stations; and
 - iii. Retail sales of heating oil (kerosene and marked gasoil).
17. The Commission does not need to come to a definitive view on the precise relevant product market in this instance since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the precise relevant product market is defined narrowly (e.g., the retail sale of motor fuels, automotive lubricants and heating oil with associated forecourt convenience stores) or more broadly to encompass retail grocery stores in general. For the purposes of the competitive analysis, the Commission considered the narrowest possible relevant product markets i.e., the retail sale of each of motor fuels (diesel (DERV) and petrol), automotive lubricants and heating oil (kerosene and marked gas oil), with associated forecourt convenience stores.
18. Similarly, the Commission does not need to come to a definitive view on the precise relevant geographic market in this instance since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the precise relevant geographic market is defined as local, regional or national. However, in order to determine whether the proposed transaction might result in a substantial lessening of competition, the Commission analysed its impact by reference to the narrowest possible geographic markets, i.e. the local areas (within a defined radius – see paragraphs 21 and 22 below) in which each of the nine retail service stations operated by the Target Companies and the

⁹ Estimate by TOP, based on Experian Catalyst data.

¹⁰ DERV stands for 'Diesel Engine Road Vehicle'.

¹¹ In 2015, TOP supplied [...]% of the diesel requirement and [...]% of the petrol requirements of the service stations comprising the Target Companies and the Target Assets.

¹² The retail service station located at JFK Industrial Park in Dublin 12 does not operate a convenience retail store.



Target Assets are located. The results of the analysis are set out in paragraphs 19 to 25 below.

19. In relation to **convenience retail stores**, Tedcastles (through TOP), the Target Companies and the Target Assets are involved in retail sales through convenience stores which while forming part of their motor fuel retail service stations are not considered to be part of the same product market.¹³ The Commission has on a number of occasions considered the retail sector, which encompasses a wide spectrum of large supermarkets known as "multiples" (such as Dunnes Stores, SuperValu and Tesco, as well as Aldi and Lidl, who are sometimes referred to as 'discounters'), medium-sized shops which are usually part of a "symbol" group (such as Centra, Londis and Spar) and smaller stores, categorised as 'convenience' stores (such as Daybreak and smaller Londis and Spar stores and independent retailers). Forecourt convenience stores fall within the latter category. There are clearly a large and varied (in size) number of competitors in the retail sector whose presence will constrain the activities of the merged entity post-transaction. The Commission has therefore decided not to focus further on this particular potential market in this Determination.
20. In relation to **retail sales of motor fuels (diesel (DERV) and petrol) and automotive lubricants**¹⁴, the Commission's predecessor, the Competition Authority¹⁵, has previously found that there is a localised motor fuels retail market, using different isochrones for local markets and differentiating between urban and rural settings (i.e., 2 miles/3.2 kilometres ("km") radius from a retail forecourt in an urban setting and 5 miles/8 km in a rural setting)¹⁶. The former Competition Authority in subsequent decisions used isochrone analysis as a screening method to identify potential competition concerns, focusing on a radius of 5 miles/8 km from any target retail fuel forecourt.¹⁷ Although the former Competition Authority did not come to any definitive conclusion in respect of the relevant geographic market for retail sales of lubricants, it commented that given that retail distribution of both motor fuels and lubricants occurs through retail service stations, it would be reasonable to suggest that competition in the retail distribution of lubricants is at least local in nature.¹⁸
21. The parties have identified four potential local markets where there are TOP service stations competing within a 5 mile/8 km radius of the service stations operated by the Target Companies and the Target Assets. In each of the identified potential local markets, as set out in Table 3 below, the estimated market shares of each of the service stations operated by the Target Companies and the Target Assets are below [15-20]% and there are a number of competing service stations and at least five competing facias/brands within the same 5 mile/8 km radius. In addition, two of the retail service stations operated by the Target Companies in the identified potential local markets (i.e. the retail service stations located in Mullingar, Co. Westmeath and Newhall, Co. Kildare) are already TOP-branded

¹³ Except for the retail service station located at JFK Industrial Park in Dublin 12, which does not operate a convenience retail store.

¹⁴ All of the retail service stations comprising the Target Companies and the Target Assets, except for the retail service station located at JFK Industrial Park, Dublin 12 had sales of automotive lubricants.

¹⁵ On 31 October 2014, in accordance with sections 38 and 39 of the Competition and Consumer Protection Act 2014, the Competition Authority was dissolved and all of the functions vested in the Competition Authority immediately before that date became vested in the Commission.

¹⁶ M/06/044 Topaz/Statoil Ireland; Competition Authority, *Annual Report 2006*, pp. 30-31.

¹⁷ See, for example, M/09/008 – Chevron/Exxon and M/15/019 – TOP/The Ashbourne Oil Co.

¹⁸ M/09/008 – Chevron/Exxon.



and therefore there will not be any reduction in competing facias in these areas as a result of the proposed acquisition.

Table 3: Analysis of the service stations operated by the Target Companies and the Target Assets which are located within a 5 mile/8 kilometre radius of a TOP service station engaged in retail sales of motor fuels and lubricants

Target service station	Number of competing service stations within a 5 mile/8 km radius	Number of competing facias (including TOP)	Estimated market share ¹⁹
Ballyvolane, Co. Cork	34	8 + 1 unbranded	[0-5]%
dci Fuel Card JFK, Dublin 12	76	7 + 5 unbranded	[0-5]%
Mullingar, Co. Westmeath	14	7 + 1 unbranded	[0-5]%
Newhall, Co. Kildare	13	5 + 3 unbranded	[15-20]%

Source: The parties

22. In relation to **retail sales of heating oil**, the Commission has in previous decisions considered that the geographic scope of the potential market is local, with radii of between 30 km and 50 km from a target station which has retail heating oil sales, depending on the particular circumstances.²⁰ The Vendors do not own delivery trucks and all sales of heating oil by the Target Companies and Target Assets occur ex-pump (i.e. similar to motor fuel) where customers are required to collect the product, typically in 45 litre drums from the nearest retail service station.²¹ Nevertheless, the parties have identified seven potential local markets where there are TOP depots competing within a 30 km radius of the service stations operated by the Target Companies and the Target Assets. In each of the identified potential local markets, as set out in Table 4 below, the estimated market shares of each of the service stations operated by the Target Companies and the Target Assets are below [0-5]% and that of the relevant TOP depots is less than [10-15].

Table 4: Analysis of the service stations operated by the Target Companies and the Target Assets which are located within a 30 kilometre radius of a TOP depot engaged in retail sales of heating oil.

Target service station	Target estimated market share within 30 km radius	TOP depot (retail heating oil operation)	TOP estimated market share within 30 km radius
Newhall, Naas, Co. Kildare	[0-5]%	TOP Kildare	[5-10]%

¹⁹ Market shares are based on the total volume of fuel sales by a particular retail service station in the relevant local area in 2015.

²⁰ See for example, M/15/019 – TOP/The Ashbourne Oil Co. and M/15/061 – East Cork Oil/M.W. Fuels t/a Tara Oil & Tara 24/7 Service Station.

²¹ Confirmed to the Commission in a telephone discussion with [the individual shareholder] on 16 March 2016.



Ballyvolane, Co. Cork	[0-5]%	TOP Cork	[0-5]%
Rathangan, Co. Kildare	[0-5]%	TOP Kildare	[5-10]%
Athy, Co. Kildare	[0-5]%	TOP Kildare	[5-10]%
Stradbally, Co. Laois	[0-5]%	TOP Carlow	[10-15]%
Mullingar, Co. Westmeath	[0-5]%	TOP Mullingar	[0-5]%
Ballymoreustace, Co. Kildare	[0-5]%	TOP Kildare	[5-10]%

Source: The parties

23. In all of the above areas of overlap, there are a large and varied (in size) number of competitors whose presence will constrain the activities of the merged entity post-transaction.
24. With regard to the **vertical aspect** of the proposed transaction (i.e., TOP is the major supplier of motor fuels and heating oil to the Target Companies and the Target Assets²²), the proposed transaction is not likely, in the Commission's view, to result in any foreclosure concerns. In both the upstream non-retail supply of petroleum products and the downstream refined fuel products retailing market, especially motor fuel (diesel (DERV) and petrol) and heating oil (kerosene and marked gas oil), there are a number of large competitors whose presence will constrain the activities of the merged entity post-transaction. Thus TOP does not have sufficient market power in any these segments to allow it to engage in a foreclosure strategy post-merger.
25. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

26. At the request of the Commission, the parties provided the Commission with a draft of the share purchase agreement to be entered into between the parties to the proposed transaction, which contains a number of restrictive obligations on Tougher's Oil and the individual shareholder²³. These include non-compete and non-solicitation covenants restricting Tougher's Oil and the individual shareholder, for a period of two years commencing on completion of the proposed transaction, from competing with the businesses of the Target Companies and from soliciting existing customers and employees of the Target Companies.
27. The parties state that the restrictive covenants are necessary in a transaction of the nature of the proposed transaction, i.e. transferring businesses as going concerns with goodwill. The parties therefore view the restrictive covenants to be fair and reasonable.

²² TOP does not supply motor lubricants or groceries to the Target Companies or Target Assets.

²³ The parties provided the Commission with a copy of a draft share purchase agreement between Tougher's Oil (as seller of the Target Companies), [the individual shareholder] and Tedcastles for the acquisition by Tedcastles of the Target companies.



28. The Commission was of the view that the non-compete obligation, in the initial draft share purchase agreement provided to the Commission, went beyond what was reasonable and proportionate to ensure the protection of the purchaser's legitimate business concerns. In particular, Tougher's Oil and the individual shareholder was restricted from being involved in any business competing directly or indirectly with the Target Companies anywhere in the State. The parties subsequently proposed to the Commission that they would amend the geographic scope of the non-compete obligation in the draft share purchase agreement so that Tougher's Oil and the individual shareholder would be restricted from the abovementioned behaviour only within a specified geographic area in which the Target Companies currently carry on business²⁴. The Commission has accepted this proposal.
29. The duration of the restrictive covenants does not exceed the maximum duration acceptable to the Commission²⁵ and, on the basis of the abovementioned amendment to the geographic scope of the non-compete clause, the Commission considers the restriction to be directly related and necessary to the implementation of the proposed transaction.

²⁴ The revised geographic scope of the non-compete obligation was agreed in correspondence between the Commission and the parties dated 22 March 2016.

²⁵ In this respect, the Commission follows the approach adopted by the EU Commission in paragraph 20 of its "Commission Notice on restrictions directly related and necessary to concentrations" (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby Tedcastles (Group), a wholly-owned subsidiary of Hillingdon Investment Company, would acquire the entire issued share capital and thus sole control of Sirio Retail Operations Limited and Sirio Property Company Limited, as well as sole control over certain assets, constituting a retail fuel service station in Ballyvolane, Co. Cork and an oil gantry in Newhall, Co. Kildare, currently controlled by Canicula Investments Limited, will not be to substantially lessen competition in any market for goods or services in the State, and accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Isolde Goggin
Chairperson
Competition and Consumer Protection Commission